

## EXHIBIT 1D

**From:** [Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com) on behalf of [Bennett, Allyson R. - ABennett at mofo.com](mailto:ABennett@mofo.com) (via [Alter-AI-TT list](#))  
**To:** [Najemy, Laura](#); [Charlotte Lopic](#); [Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com); [Justice, Daniel](#); [openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com); [NYClassActions\\_Microsoft\\_OHS](#); [Hurst, Annette L.](#); [Nikolaides, Eric K.](#); [OpenAICopyright](#); [MicrosoftNYClassActionFDBR@faegredrinker.com](mailto:MicrosoftNYClassActionFDBR@faegredrinker.com)  
**Subject:** RE: Alter v. OpenAI - Protective Order, ESI Order  
**Date:** Monday, April 22, 2024 2:03:42 PM  
**Attachments:** [image003.png](#)  
[image005.png](#)

---

EXTERNAL Email

Counsel,

OpenAI is ok with the draft as circulated by Microsoft's counsel.

Thanks,

Ally

**ALLYSON BENNETT** (she/her)

Partner

[abennett@mofo.com](mailto:abennett@mofo.com)

T +1 (213) 892-5200

M +1 (818) 294-3559

**ORRISON  
FOERSTER**

---

**From:** Najemy, Laura <[lnajemy@orrick.com](mailto:lnajemy@orrick.com)>  
**Sent:** Monday, April 22, 2024 10:50 AM  
**To:** [Charlotte Lopic <CLopic@susmangodfrey.com>](mailto:CLopic@susmangodfrey.com); [Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com); [Justice, Daniel <djustice@orrick.com>](mailto:djustice@orrick.com); [openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com); [NYClassActions\\_Microsoft\\_OHS <NYClassActions\\_Microsoft\\_OHS@orrick.com>](mailto:NYClassActions_Microsoft_OHS@orrick.com); [Hurst, Annette L. <ahurst@orrick.com>](mailto:ahurst@orrick.com); [Nikolaides, Eric K. <ENikolaides@mofo.com>](mailto:ENikolaides@mofo.com); [OpenAICopyright <OpenAICopyright@mofo.com>](mailto:OpenAICopyright@mofo.com); [MicrosoftNYClassActionFDBR@faegredrinker.com](mailto:MicrosoftNYClassActionFDBR@faegredrinker.com)  
**Subject:** RE: Alter v. OpenAI - Protective Order, ESI Order

External Email

---


Counsel,

We have accepted your revisions to the paragraph regarding use of TAR in the attached. As we indicated during the last meet and confer and through our subsequent correspondence, Microsoft will not agree to Plaintiffs' proposal regarding exchange of search terms/custodians/hit reports. The disclosure of details of Microsoft's discovery investigation is voluntary, and the standard for obtaining discovery about discovery requires a showing that cannot be made without good cause, which is not present here. To make an agreement to disclose work product information it is not otherwise required to disclose, Microsoft expects that Plaintiffs be willing to offer something in return. Plaintiffs have

declined to do so. Since Plaintiffs will not agree to limits on the number of custodians, we see no reason the parties must agree to these additional terms. Microsoft will sign the attached without any additional edits.

Thanks,  
Laura

**Laura B. Najemy**  
Partner

Orrick  
Boston   
T +1-617-880-1889  
M +1-413-478-6502  
[lnajemy@orrick.com](mailto:lnajemy@orrick.com)

---

**From:** Charlotte Lepic <[CLepic@susmangodfrey.com](mailto:CLepic@susmangodfrey.com)>

**Sent:** Monday, April 22, 2024 12:25 AM

**To:** [Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com); Najemy, Laura <[lnajemy@orrick.com](mailto:lnajemy@orrick.com)>; Justice, Daniel <[djustice@orrick.com](mailto:djustice@orrick.com)>; [openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com); NYClassActions\_Microsoft\_OHS <[NYClassActions\\_Microsoft\\_OHS@orrick.com](mailto:NYClassActions_Microsoft_OHS@orrick.com)>; Hurst, Annette L. <[ahurst@orrick.com](mailto:ahurst@orrick.com)>; Nikolaides, Eric K. <[ENikolaides@mofo.com](mailto:ENikolaides@mofo.com)>; OpenAICopyright <[OpenAICopyright@mofo.com](mailto:OpenAICopyright@mofo.com)>; [MicrosoftNYClassActionFDBR@faegredrinker.com](mailto:MicrosoftNYClassActionFDBR@faegredrinker.com)

**Subject:** RE: Alter v. OpenAI - Protective Order, ESI Order

**[EXTERNAL]**

Counsel,

To our understanding, there are only two outstanding items relating to the ESI protocol: (1) the process for custodial searches and (2) the process for TAR, if it arises. We shared our proposal as to these issues almost two weeks ago. Please let us know by close of business Tuesday if you are comfortable with our language on these issues.

Kind regards,  
Charlotte

---

**Charlotte Lepic** | Susman Godfrey LLP  
212-729-2064 (o) | 646-421-3356 (m)

---

**From:** [Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com) <[Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com)>

**On Behalf Of** Charlotte Lepic

**Sent:** Tuesday, April 9, 2024 5:40 PM

**To:** Najemy, Laura <[lnajemy@orrick.com](mailto:lnajemy@orrick.com)>; Justice, Daniel <[djustice@orrick.com](mailto:djustice@orrick.com)>; [openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com); NYClassActions\_Microsoft\_OHS <[NYClassActions\\_Microsoft\\_OHS@orrick.com](mailto:NYClassActions_Microsoft_OHS@orrick.com)>; Hurst, Annette L. <[ahurst@orrick.com](mailto:ahurst@orrick.com)>; Nikolaides,

Eric K. <[ENikolaides@mofo.com](mailto:ENikolaides@mofo.com)>; OpenAICopyright <[OpenAICopyright@mofo.com](mailto:OpenAICopyright@mofo.com)>

**Cc:** [Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com)

**Subject:** Re: Alter v. OpenAI - Protective Order, ESI Order

EXTERNAL Email

Counsel,

You originally proposed a five-custodian limit for keyword searches, which is unreasonably low given the needs of the case and premature given that Defendants have not even produced a meaningful number of documents or custodian information. The new draft you circulated is different – it apparently allows Defendants to unilaterally select custodians without any input from Plaintiffs or meet-and-confer efforts. The proposed language also appears to eliminate any obligation from either party to meet and confer to negotiate search terms, custodians, and other ESI issues – something that is standard practice. Plaintiffs do not agree to the changes in the latest draft. Our revised draft is attached.

Kind regards,

Charlotte

---

**Charlotte Lepic** | Susman Godfrey LLP

212-729-2064 (o) | 646-421-3356 (m)

---

**From:** Najemy, Laura <[lnajemy@orrick.com](mailto:lnajemy@orrick.com)>

**Sent:** Tuesday, April 9, 2024 12:13 PM

**To:** Justice, Daniel <[djustice@orrick.com](mailto:djustice@orrick.com)>; Charlotte Lepic <[CLepic@susmangodfrey.com](mailto:CLepic@susmangodfrey.com)>; [openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com) <[openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com)>; NYClassActions\_Microsoft\_OHS <[NYClassActions\\_Microsoft\\_OHS@orrick.com](mailto:NYClassActions_Microsoft_OHS@orrick.com)>; Hurst, Annette L. <[ahurst@orrick.com](mailto:ahurst@orrick.com)>; Nikolaides, Eric K. <[ENikolaides@mofo.com](mailto:ENikolaides@mofo.com)>; OpenAICopyright <[OpenAICopyright@mofo.com](mailto:OpenAICopyright@mofo.com)>

**Cc:** [Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com) <[Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com)>

**Subject:** RE: Alter v. OpenAI - Protective Order, ESI Order

EXTERNAL Email

Counsel,

Following up on Dan's email below, please let us know if we are in agreement on the changes to the ESI Protocol or if we need to set up a call to discuss.

Thanks,

Laura

**Laura B. Najemy**

Partner

Orrick

Boston 

T +1-617-880-1889

M +1-413-478-6502

[lnajemy@orrick.com](mailto:lnajemy@orrick.com)

---

**From:** Justice, Daniel <[djustice@orrick.com](mailto:djustice@orrick.com)>

**Sent:** Monday, April 1, 2024 5:22 PM

**To:** Charlotte Lepic <[CLepic@susmangodfrey.com](mailto:CLepic@susmangodfrey.com)>; [openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com); NYClassActions\_Microsoft\_OHS <[NYClassActions\\_Microsoft\\_OHS@orrick.com](mailto:NYClassActions_Microsoft_OHS@orrick.com)>; Hurst, Annette L. <[ahurst@orrick.com](mailto:ahurst@orrick.com)>; Nikolaides, Eric K. <[ENikolaides@mofo.com](mailto:ENikolaides@mofo.com)>; OpenAICopyright <[OpenAICopyright@mofo.com](mailto:OpenAICopyright@mofo.com)>

**Cc:** [Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com)

**Subject:** RE: Alter v. OpenAI - Protective Order, ESI Order

Counsel,

Attached is a further draft of the ESI Protocol with Microsoft's and OpenAI's edits in track changes. As we have been unable to agree on provisions regarding search terms and custodians, Defendants propose removing those provisions and filing an ESI Protocol that covers the remaining discovery issues, namely, TAR, production format, privilege logs, third party discovery, and the inadvertent production of privileged material.

---

**From:** Charlotte Lepic <[CLepic@susmangodfrey.com](mailto:CLepic@susmangodfrey.com)>

**Sent:** Monday, March 25, 2024 6:13 PM

**To:** Justice, Daniel <[djustice@orrick.com](mailto:djustice@orrick.com)>; [openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com); NYClassActions\_Microsoft\_OHS <[NYClassActions\\_Microsoft\\_OHS@orrick.com](mailto:NYClassActions_Microsoft_OHS@orrick.com)>; Hurst, Annette L. <[ahurst@orrick.com](mailto:ahurst@orrick.com)>; Nikolaides, Eric K. <[ENikolaides@mofo.com](mailto:ENikolaides@mofo.com)>; OpenAICopyright <[OpenAICopyright@mofo.com](mailto:OpenAICopyright@mofo.com)>

**Cc:** [Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com)

**Subject:** Re: Alter v. OpenAI - Protective Order, ESI Order

**[EXTERNAL]**

OpenAI & Microsoft teams,

Please let us know by tomorrow your position on these revisions to the ESI order. If you are not comfortable with these changes, we believe we are at impasse, and will move the court for entry of the order as drafted.

Please also let us know this week your position on the protective order. Defendants have had the majority of our edits for over 10 days.

For OpenAI:

- You told us last week that you would provide us with a sentence describing the contours of what you are willing to produce with respect to RFP 24, "documents and communications reflecting or discussing any instances, or alleged instances, in which ChatGPT directly reproduced potentially copyrighted material." Please provide that description this week.
- You explained on Friday that you object to conducting an "entirely separate review" of the FTC population, but you also confirmed that review of the documents collected has not yet begun (3/22 email.) Given that the FTC has requested information related to training datasets and information related to OpenAI's management and corporate structure – all material that would be responsive and relevant here – please explain why OpenAI's counsel in the FTC matter cannot, in the course of its review of these documents, identify material that is also responsive to requests in this action. Alternatively, please explain why OpenAI could not use standard de-duplicating software to dedupe between the FTC-collected materials and any material collected from this case to ensure that OpenAI's collection and production here is complete. We also look forward to hearing OpenAI's update regarding any interrogatory responses served on the FTC.

Kind regards,

Charlotte

---

**Charlotte Lepic** | Susman Godfrey LLP

212-729-2064 (o) | 646-421-3356 (m)

---

From: [Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com) <[Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com)>

on behalf of Rohit Nath <[RNath@susmangodfrey.com](mailto:RNath@susmangodfrey.com)>

**Sent:** Wednesday, March 20, 2024 1:57 AM

**To:** [Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com) <[Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com)>; Nikolaides, Eric K. <[ENikolaides@mofo.com](mailto:ENikolaides@mofo.com)>; Stoler, Reilly T. <[rstoler@lchb.com](mailto:rstoler@lchb.com)>; Dozier, Wesley <[wdozier@lchb.com](mailto:wdozier@lchb.com)>; Geman, Rachel <[rgeman@lchb.com](mailto:rgeman@lchb.com)>

**Cc:** OpenAICopyright <[OpenAICopyright@mofo.com](mailto:OpenAICopyright@mofo.com)>; [openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com) <[openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com)>; Justice, Daniel <[djustice@orrick.com](mailto:djustice@orrick.com)>; Hurst, Annette L. <[ahurst@orrick.com](mailto:ahurst@orrick.com)>; NYClassActions\_Microsoft\_OHS <[NYClassActions\\_Microsoft\\_OHS@orrick.com](mailto:NYClassActions_Microsoft_OHS@orrick.com)>

**Subject:** RE: Alter v. OpenAI - Protective Order, ESI Order

### EXTERNAL Email

Following up on the call today, enclosed are our edits. We've deleted the paragraph on presumptive caps on custodians but added a paragraph that, we hope, can bridge the gap. Please send us your positions this week; we need to make an effort to wrap this up or raise issues with the court, as necessary.

I can make myself available for a call any day for the remainder of the week.

RN

--

Rohit D. Nath

Partner | Susman Godfrey L.L.P.

[RNath@susmangodfrey.com](mailto:RNath@susmangodfrey.com)

Office: (310) 789-3138

Cell: (602) 405-9789

---

**From:** [Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com) <[Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com)>

**Sent:** Thursday, March 14, 2024 6:49 AM

**To:** Nikolaides, Eric K. <[ENikolaides@mofo.com](mailto:ENikolaides@mofo.com)>; Stoler, Reilly T. <[rstoler@lchb.com](mailto:rstoler@lchb.com)>; Rohit Nath <[RNath@susmangodfrey.com](mailto:RNath@susmangodfrey.com)>; Dozier, Wesley <[wdozier@lchb.com](mailto:wdozier@lchb.com)>; Geman, Rachel <[rgeman@lchb.com](mailto:rgeman@lchb.com)>; 'Alter-AI-TT@simplelists.susmangodfrey.com' <[Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com)>

**Cc:** OpenAICopyright <[OpenAICopyright@mofo.com](mailto:OpenAICopyright@mofo.com)>;  
[openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com); Justice, Daniel <[djustice@orrick.com](mailto:djustice@orrick.com)>; Hurst,  
Annette L. <[ahurst@orrick.com](mailto:ahurst@orrick.com)>; NYClassActions\_Microsoft\_OHS  
<[NYClassActions\\_Microsoft\\_OHS@orrick.com](mailto:NYClassActions_Microsoft_OHS@orrick.com)>  
**Subject:** Alter v. OpenAI - Protective Order, ESI Order

EXTERNAL Email

Counsel,

Following up on the below, attached are Defendants' edits (in redline) to the ESI order.

Thanks,

Vera

---

**From:** Nikolaides, Eric K. <[ENikolaides@mofo.com](mailto:ENikolaides@mofo.com)>  
**Sent:** Tuesday, February 27, 2024 3:43 PM  
**To:** Stoler, Reilly T. <[rstoler@lchb.com](mailto:rstoler@lchb.com)>; 'Rohit Nath' <[RNath@susmangodfrey.com](mailto:RNath@susmangodfrey.com)>;  
Dozier, Wesley <[wdozier@lchb.com](mailto:wdozier@lchb.com)>; Geman, Rachel <[rgeman@lchb.com](mailto:rgeman@lchb.com)>; 'Alter-AI-  
TT@simplelists.susmangodfrey.com' <[Alter-AI-TT@simplelists.susmangodfrey.com](mailto:Alter-AI-TT@simplelists.susmangodfrey.com)>  
**Cc:** OpenAICopyright <[OpenAICopyright@mofo.com](mailto:OpenAICopyright@mofo.com)>;  
[openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com); Justice, Daniel <[djustice@orrick.com](mailto:djustice@orrick.com)>; Hurst,  
Annette L. <[ahurst@orrick.com](mailto:ahurst@orrick.com)>  
**Subject:** Protective Order

Counsel,

Attached please see a version of the PO that contains both the Microsoft and OpenAI defendants' proposed revisions to plaintiffs' 2/14 draft, in track changes. Let us know if you'd like to discuss.

Best,

Eric



**Eric K. Nikolaides**

**Associate**

[ENikolaides@mofo.com](mailto:ENikolaides@mofo.com)

T +1 (212) 336-4061

Morrison Foerster

250 West 55th Street

New York, NY 10019-9601



[mofo.com](http://mofo.com) | [LinkedIn](#) | [Twitter](#)

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

To unsubscribe from this list please go to <https://https://simplelists.susmangodfrey.com/subs/>

To unsubscribe from this list please go to <https://https://simplelists.susmangodfrey.com/subs/>

---

**NOTICE TO RECIPIENT** | This e-mail is meant for only the intended recipient of the transmission, and may be a communication privileged by law. If you received this e-mail in error, any review, use, dissemination, distribution, or copying of this e-mail is strictly prohibited. Please notify us immediately of the error by return e-mail and please delete this message

from your system. Thank you in advance for your cooperation.

For more information about Orrick, please visit <http://www.orrick.com>.

In the course of our business relationship, we may collect, store and transfer information about you. Please see our privacy policy at <https://www.orrick.com/Privacy-Policy> to learn about how we use this information.

To unsubscribe from this list please go to <https://simplelists.susmangodfrey.com/subs/>

---

**NOTICE TO RECIPIENT** | This e-mail is meant for only the intended recipient of the transmission, and may be a communication privileged by law. If you received this e-mail in error, any review, use, dissemination, distribution, or copying of this e-mail is strictly prohibited. Please notify us immediately of the error by return e-mail and please delete this message from your system. Thank you in advance for your cooperation.

For more information about Orrick, please visit <http://www.orrick.com>.

In the course of our business relationship, we may collect, store and transfer information about you. Please see our privacy policy at <https://www.orrick.com/Privacy-Policy> to learn about how we use this information.

---

**NOTICE TO RECIPIENT** | This e-mail is meant for only the intended recipient of the transmission, and may be a communication privileged by law. If you received this e-mail in error, any review, use, dissemination, distribution, or copying of this e-mail is strictly prohibited. Please notify us immediately of the error by return e-mail and please delete this message from your system. Thank you in advance for your cooperation.

For more information about Orrick, please visit <http://www.orrick.com>.

In the course of our business relationship, we may collect, store and transfer information about you. Please see our privacy policy at <https://www.orrick.com/Privacy-Policy> to learn about how we use this information.

=====

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

.

To unsubscribe from this list please go to <https://simplelists.susmangodfrey.com/confirm/?u=ywK4d7wMZ4ndcHsGv0J5iLtRxpQkslNO>